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LUMEN INTELLECTUAL PROPERTY SERVICES, INC.  
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In re Application of  
Fontana et al. .  
Application No. 09/853,345  
Filed: May 10, 2001

Attorney Docket No. ARC9-2001-0017US1

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition filed July 21, 2004, captioned under 37 CFR 1.47(a), which is being treated as a petition under 37 CFR 1.183 to waive 37 CFR 1.131 to the extent that it requires that all of the named inventors execute any declaration filed thereunder.

So construed, the petition is granted to the extent indicated.

37 CFR 1.47 is only applicable where a named inventor cannot be found or located or refuses to execute the oath or declaration required by CFR 1.63, and is immaterial to execution of any other type of oath or declaration. As noted in MPEP 715.04, an adequate showing may lead to acceptance of a declaration submitted under 37 CFR 1.131 which was executed by less than all the named inventors of the claimed subject matter. Nevertheless, under the facts presented, it is agreed that justice requires waiver of the rules to the extent they require Ms. Lu to declare under 37 CFR 1.131. However, this favorable decision does not relieve applicants from their burden to establish that the invention was completed before the date of the reference and that the claimed invention was the product of the joint inventors, see In re Carlson, 79 F.2d. 900, 27 USPQ 400 (CCPA 1935), or the procedural constraints on any application that, as here, stands finally rejected.

Telephone inquiries related to this decision should be directed to Petitions Examiner Brian Hearn at (703) 305-1820.

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Patent Examination Policy